

## Chapter DWD 42

### STATE DIRECTORY OF NEW HIRES

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**DWD 42.01 Purpose.** (1) 42 USC 653a(a)(1)(A) requires each state to establish a state directory of new hires that contains information reported by employers about each newly hired employee and requires employers to report this information. Section 103.05, Stats., implemented the federal new hire reporting requirements by creating a state directory of new hires and requiring employers to report information to the department about each newly hired employee.

(2) This chapter specifies the information that employers must provide, the procedures by which employers may comply with the new hire reporting requirements, and the penalties for violating this rule.

**History:** Cr. Register, April, 2001, No. 544, eff. 5-1-01.

#### **DWD 42.02 Definitions.** In this chapter:

(1) "Department" means the department of workforce development or its authorized agent.

(2) "Employee" means an individual who is an employee within the meaning of chapter 24 of the internal revenue code of 1986 (26 USC 3401) but does not include an individual performing intelligence or counterintelligence functions for a federal or state agency if the head of the agency has determined that reporting pursuant to s. DWD 42.01 with respect to the individual could endanger the individual's safety or compromise an ongoing investigation or intelligence mission.

**Note:** Under 26 USC 3401(c), an "employee" includes "an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term 'employee' also includes an officer of a corporation."

(3) "Employer" means a person who is an employer within the meaning of chapter 24 of the internal revenue code of 1986 26 USC 3401(d) and includes any governmental entity and any labor organization.

**Note:** Under 26 USC 3401(d), an "employer" means "the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that -

- (1) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term 'employer' (except for purposes of subsection (a)) means the person having control of the payment of such wages, and
- (2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term 'employer' (except for purposes of subsection (a)) means such person."

(4) "Federal employer identification number" means the identifying number assigned to the employer under section 6109 of the internal revenue service code of 1986 26 USC 6109.

(5) "Labor organization" means an organization that is a labor organization within the meaning of 29 USC 152(5) and includes any hiring hall or other organization that is used by the labor organization and an employer to carry out requirements of an agreement described in 29 USC 159(f)(3) between the labor organization and the employer.

**Note:** Under 29 USC 152(5), the term "labor organization" means "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

(6) "Multi-state employer" means an employer that employs individuals in Wisconsin and in at least one other state.

(7) "Newly hired employee" means any of the following:

- (a) An employee who reports for work for the first time.

(b) An employee, other than a poll worker or a substitute teacher, who is rehired, recalled, or returns to work after an unpaid absence of more than 90 days.

(c) A poll worker who the employer has never reported to the state directory of new hires as a newly hired employee.

(d) A substitute teacher who performs services for the employer but who the employer has not reported to the state directory of new hires as newly hired during the current school year.

(8) "Poll worker" means a person who staffs a polling place on election day to assist in holding the election.

(9) "State directory of new hires" means an automated directory containing information supplied by employers about each newly hired employee, pursuant to s. 103.05, Stats.

**History:** Cr. Register, April, 2001, No. 544, eff. 5-1-01.

**DWD 42.03 Reporting requirements.** (1) REPORT CONTENTS. Except as provided in sub. (2)(b) and s. DWD 42.04(1)(b), each employer that has one or more employees who perform services in Wisconsin shall file a report containing the following information with the department:

- (a) Newly hired employee's name.
- (b) Newly hired employee's address.
- (c) Newly hired employee's social security number.
- (d) Employer's name.
- (e) Employer's payroll address for the newly hired employee.
- (f) Employer's federal employer identification number.
- (g) Date the newly hired employee started work.
- (h) Employee's date of birth.

(2) REPORT FORMAT. (a) An employer may file new hire reports in any of the following ways:

1. Electronically as authorized by the department.

**Note:** For further information on electronic reporting, see the "New Hire Reporting" section of the DWD web site at <http://www.dwd.state.wi.us> or call the toll free inquiry line at 1-888-300-HIRE (4473). Specialists are available to take calls Monday through Friday, 8:00 a.m. to 4:00 p.m. (CST).

2. On paper by submitting a copy of the newly hired employee's completed WT-4 form (Employee's Wisconsin Withholding Exemption Certificate/New Hire Reporting).

3. On paper by submitting a paper report containing all of the information required under sub. (1).

4. On paper by submitting a copy of the newly hired employee's completed federal W-4 form (Employee's Withholding Allowance Certificate).

(b) If an employer files a new hire report by submitting a copy of the newly hired employee's W-4 that contains completed reporting requirements under sub. (1) (a) to (f), then the employer has satisfied the reporting requirement.

(3) REPORT DUE DATES. (a) Except as provided in par. (b), a report must be filed within 20 days after the newly hired employee starts work.

(b) If an employer is filing new hire reports electronically, reports must be filed twice monthly, not less than 12 days nor more than 16 days apart.

(c) If the deadline for filing a report falls on a Saturday, Sunday, any of the holidays enumerated under ss. 230.35 (4) (a) and 757.17, Stats., or any other day on which mail is not delivered by the United States postal service, then the deadline shall be extended to include the next business day.

(4) The department may waive the requirement to report the date of birth of the newly hired employee if the employer is unable to provide it.

**History:** Cr. Register, April, 2001, No. 544, eff. 5-1-01.

**DWD 42.04 Multi-state employers. (1) REPORTING OPTIONS.** Multi-state employers may choose to do either of the following:

(a) Report only the newly hired employees working in the state of Wisconsin as described in s. DWD 42.03 and report employees not working in Wisconsin to the respective states in which they work.

(b) Report all newly hired employees to a single state in which the multi-state employer has at least one employee working, regardless of where the other employees work. If the multi-state employer chooses Wisconsin as the single state to which it reports, that employer must file new hire reports electronically as provided in s. DWD 42.03 (2) (a) 1. In addition to containing all the information in s. DWD 42.03 (1), the electronically filed report for any newly hired employee not working in Wisconsin must also

include the state in which the employee will work. Report due dates are the same as those provided in s. DWD 42.03 (3).

(2) **FEDERAL NOTICE.** Employers reporting under the option in sub. (1)(b) must submit a written notice to the secretary of the federal department of health and human services informing him or her of which state has been selected for new hire reporting.

(3) **REPORT FORMATS.** The information to be supplied and the format used by multi-state employers to file new hire reports may vary according to the requirements of the state to which the new hire reports are being filed.

**History:** Cr. Register, April, 2001, No. 544, eff. 5-1-01.

**DWD 42.05 Penalties. (1)** Any person who violates any provision of this rule may be subject to the penalties provided under s. 103.05, Stats. No penalty may be imposed unless the person has been notified of the violation and has been provided with an opportunity to correct the violation.

(2) Pursuant to s. 103.005(10), Stats., if a penalty is imposed it shall be subject to review in the manner provided in ch. 227, Stats.

**History:** Cr. Register, April, 2001, No. 544, eff. 5-1-01.